



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### SOUTHWEST REGIONAL OFFICE

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David K. Paylor  
Director

Dallas R. Sizemore  
Regional Director

## STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO Imperial Transport of Tenn., Inc. Incident Report No. IR 2010-S-0051

### SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.34:20, between the State Water Control Board and Imperial Transport of Tenn., Inc., for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

### SECTION B: Definitions

Unless the context indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. "Imperial" or "Imperial Transport" means Imperial Transport of Tenn., Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Imperial Transport is a "person" within the meaning of Va. Code § 62.1-44.3.
5. "IR" means Incident Report.

6. "Location" means the facility, land, road, storm drain(s) or state water(s) where the oil discharge occurred.
7. "Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. *See* Va. Code § 62.1-44.34:14.
8. "Site" means the facility, land, road, storm drain(s) and surface water(s) adversely affected by the oil discharge.
9. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 11 (Va. Code §§ 62.1-44.34:14 through 62.1-44.34:23) of the State Water Control Law addresses Discharge of Oil Into Waters.
10. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
11. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
12. "Va. Code" means the Code of Virginia (1950), as amended.
13. "VAC" means the Virginia Administrative Code.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Imperial transports petroleum products to customers via tractor trailer tankers.
2. At approximately 9:13 a.m. on August 11, 2009, SWRO received notification of a discharge of fuel near Pound, Virginia. The discharge of off-road diesel fuel occurred at the intersection of U.S. Route 23 and State Rt. 671, in Wise County, Virginia.
3. Off-road diesel fuel is a petroleum product, and is included in the definition of "oil" under Va. Code § 62.1-44.34:14.
4. The notification indicated that, at approximately 8:50 a. m. on August 11, 2009, an Imperial tanker truck laden with approximately 7,400 gallons of off-road diesel fuel reportedly hydroplaned during a rainstorm and hit a guardrail, rupturing the fuel tanker. Diesel fuel was discharged onto the shoulder of the highway, entered the South Fork Pound River, and ultimately reached the Pound River. The South Fork Powell River and the Pound River are state waters.
5. DEQ staff investigated the discharge as IR No. IR 2010-S-0051. Abatement and cleanup were coordinated by the consultant/cleanup contractor hired by Imperial. Two underflow dams were constructed, containment and absorbent booms installed, and oil skimmers

and vacuum trucks utilized to collect and remove product from the river. Total distance of impact was estimated to be approximately 2.5 to 3.0 miles. An additional containment boom was placed approximately 8.0 miles downstream; no product was recovered from that area.

6. Va. Code § 62.1-44.34:18 prohibits the discharge of oil into or upon state waters, lands, or storm drain systems. Imperial is subject to the statutory prohibition.
7. On October 1, 2009 and November 16, 2009, written reports of the response, cleanup and monitoring activities were submitted to DEQ. The reports stated that a total of approximately 17,045 gallons of water/fuel mix were recovered from the river and approximately 362.42 tons of impacted soils were removed from the Site for disposal.
8. On January 12, 2010, the Department issued Notice of Violation No. NOV-001-0110-WA to Imperial for a discharge of oil to the environment.
9. On January 26, 2010, Department staff met with representatives of Imperial to discuss the discharge, emergency response, spill control and clean-up, and future actions.
10. Based on the results of field investigation, documentation submitted on October 1, 2009 and November 16, 2009, and the meeting held January 26, 2010, the State Water Control Board concludes that Imperial has violated Va. Code § 62.1-44.34:18, as described in paragraphs C(1) through C(9), above.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.34:20 and 62.1-44.34:18(C)(1), the Board orders Imperial, and Imperial agrees to:

1. Pay a civil charge of \$11,100.00 in settlement of the violations cited in this Order. The payments will be made in three payments, on the following dates:
  - a. Payment 1 of \$1,693.20 will be paid within 30 days of the effective date of the Order;
  - b. Payment 2 of \$4,703.40 will be paid on or before June 30, 2011; and,
  - c. Payment 3 of \$4,703.40 will be paid on or before June 30, 2012.
2. Reimburse DEQ for investigative costs of \$3,010.20 within 30 days of the effective date of the Order.

Payment 1 and payment for reimbursement of investigative costs shall be made by separate instruments (checks, certified checks, money orders or cashier's checks), each payable to the "Treasurer of Virginia" and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

The instrument for \$3,010.20 shall be annotated with the legend "Oil Spill Investigation Costs" and Payments 1, 2 and 3 shall each be annotated with the legend "Virginia Petroleum Storage Tank Fund". Imperial shall include its Federal Employer Identification Number (FEIN) with each payment and shall indicate that the payment is being made in accordance with the requirements of this Order. Payments 2 and 3 shall also be sent to the address indicated above.

Failure by Imperial to pay each payment by the date specified will bring due the entire remaining balance owed by Imperial.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Imperial for good cause shown by Imperial, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Imperial admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Imperial consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Imperial declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Imperial to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Imperial shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Imperial shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Imperial shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which Imperial intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Imperial.
11. This Order shall continue in effect until:
  - a. Imperial petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Imperial.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Imperial from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Imperial and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Imperial certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Imperial to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Imperial.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Imperial voluntarily agrees to the issuance of this Order.

And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

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Dallas R. Sizemore, Regional Director  
Department of Environmental Quality

Imperial Transport of Tenn., Inc. voluntarily agrees to the issuance of this Order.

Date: 4-19-10 By: Marvin Rossow, President  
(Person) (Title)  
Imperial Transport of Tenn., Inc.

Commonwealth of Virginia

City/County of Lee

The foregoing document was signed and acknowledged before me this 19th day of April, 2010, by Marvin Rossow who is President of Imperial Transport of Tenn., Inc., on behalf of the corporation.

Ernestine Wright  
Notary Public

151907

Registration No.

My commission expires: 2-28-13

Notary seal:

